IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1961 of 1988

WITH

SPECIAL CIVIL APPLICATION No 1962 of 1988

WITH

SPECIAL CIVIL APPLICATION No 8657 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 & 2 - Yes
3 to 5 - No

HIRABHAI CHHOTABHAI PATEL
Versus
OFFICER ON SPECIAL DUTY (LAND ACQUISITION) NO.1

Appearance:
MR SURESH M SHAH for Petitioners
MR UDAY BHATT, ASSTT GOVT PLEADER for Respondent Nos.1 & 2
MR DU SHAH FOR GIDC IN SPECIAL CIVIL APPLICATIONS Nos.1962 of 1988 and 8657 of 1988.

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 20/01/98

ORAL JUDGEMENT (Per : C.K.Thakker,J.)

These three petitions arise under the Land Acquisition Act, 1894. Common questions of fact and law have been raised in all the petitions. It is, therefore, convenient to dispose of all the petitions by a common judgment. While appreciating the controversy raised in the present group of petitions, relevant facts of first petition, namely, Special Civil Application No.1961 of 1988 may now be considered.

.RS 2

#. Special Civil Application No.1961 of 1988 is filed by Hirabhai Chhotabhai Patel and ten others for an appropriate writ, direction or order quashing and setting aside order (Annexure-B) passed by Special Land Acquisition Officer (Land Acquisition) No.1, GIDC, Ahmedabad on September 30, 1987, being illegal, ultra vires and unlawful and by directing him to make reference to a competent Court in accordance with the provisions of Sec.18 of the Land Acquisition Act, 1894 (hereinafter referred to as `the Act'). The case of the petitioners was that their lands were sought to be acquired for Development of Industrial Estate at Halol by Gujarat Industrial Development Corporation (`GIDC' for short). A notification under Sec.4 was issued on May 4, 1983 which was published on June 2, 1983. It, however, appears that after issuance of notification under Sec.4, there was an agreement between the land owners on the one hand and GIDC on the other hand on November 3, 1983. By that agreement, the petitioners were offered compensation of land @ Rs.25,101/- per acre, that is, Rs.62,025/- per hectre. It also appears that possession was handed over by land owners at that time by accepting an amount to the extent of 85%. 15% amount was to be paid at a later stage. It was the case of the petitioners that as they did not agree to the above understanding, proceedings started from that stage. Notification under Sec.6 was issued on February 14, 1986 and published in Official Gazette on March 13, 1986. Notices under Sec.9 were issued on October 16, 1986 and the petitioners were called upon to remain present before the first respondent. Hearing was fixed on November 17, 1986. The

petitioners' case is that they objected to any agreement or consent and requested the Land Acquisition Officer to make reference in accordance with law to a competent Court. An award was declared on January 6, 1987. But the applications filed by the petitioners were rejected by the first respondent inter alia observing that there was an agreement between the parties, the award was consent award and the case was covered by Sec.11(2) of the Act. The applications for making reference to a competent court were, therefore, not maintainable. The respondent No.2, hence, rejected the applications on September 30, 1987, which is impugned in the petition.

#. So far as the second petition (i.e. Special Civil Application No.1962 of 1988) is concerned, almost all the dates are similar except two dates. In that matter, an award was passed on April 18, 1987 and an order rejecting the application by the first respondent which is impugned in the petition was passed on October 28, 1987.

#. In the third petition, the questions raised are also common and similar to other two matters. Notification under Sec.4 was issued on June 19, 1984 which was published on July 16, 1984 whereas notification under Sec.6 was issued on February 2, 1987 and published on March 26, 1987. Award was declared on January 8, 1988 and impugned order rejecting the application for making reference was passed by the first respondent on July 11, 1988.

#. We have heard Mr.S.M.Shah, learned counsel for the petitioners in all the petitions. We have heard Mr.Uday Bhatt, learned Asstt. Govt. Pleader on behalf of State of Gujarat and Officer on Special Duty (Land Acquisition). We have also heard Mr.D.U.Shah, learned counsel appearing for GIDC in Special Civil Applications Nos.1962 and 8657 of 1988 as only in two petitions, GIDC is made party respondent.

#. Mr.Shah raised several contentions. He submitted that orders passed by the first respondent refusing to make reference to a competent court were illegal, unlawful, contrary to law and without jurisdiction. According to him, once applications were made to the first respondent requesting him to make reference in accordance with law, it was obligatory on his part to make reference to a Court. He contended that the first respondent was not right in holding that cases were covered by Sec.11(2) of the Act as awards were consent awards. No agreements were arrived at between the

parties and hence, Sec.11(1) of the Act was attracted. According to Mr.Shah, condition precedent for invoking the provisions of Sec.11(2) of the Act was not complied with inasmuch as the agreements were not in prescribed form; there was no satisfaction on the part of the Officer; agreements were not in accordance with Sec.11(2) as applicable to Gujarat under the Land Acquisition (Gujarat Unification and Amendment) Act, 1965 (Act XX of 1965); all parties had not put signatures on such consent terms; so-called signatures were not made in presence of respondent No.1; guidelines prescribed by the Government of Gujarat have not been followed; so-called agreements were of 1983 and as per the affidavit filed on behalf of the State, those agreements were not taken into account by the authorities. In the last matter (i.e. Special Civil Application No.8657 of 1988), there was no consent award at all. He, therefore, submitted that impugned orders are liable to be quashed and set aside by directing the first respondent to refer the matters to a competent court.

#. Mr.Shah and Mr.Bhatt, on the other hand, submitted that the agreements were entered into between the parties and the first respondent was within his jurisdiction to refuse to refer matters to a Court. According to them, agreements were arrived at between the Land Acquisition Officer and GIDC. They were duly signed by the parties and were acted upon also. In first two matters, at the time of entering into agreements and handing over possession, payments to the extent of 85% had been made. In the third petition, the entire amount was paid and accepted by land owners. In view of agreements, the first respondent was right in invoking Sec.11(2) of the Act and applications filed by the petitioners were rightly held to be not maintainable. It was argued that the point is concluded by various decisions of this Court as well as of the Hon'ble Supreme Court wherein it was held that if a case is covered by Sec.11(2) of the Act and an award is a consent award, an application for reference is not maintainable.

#. In respect of first two matters, an additional argument was also advanced on behalf of the respondents. It was submitted that when the matters were placed for admission, a concession was made on behalf of the petitioners by their counsel which is reflected in the orders passed by a Division Bench of this Court. Our attention was invited to both the orders. They read as under:-

"Mr.S.M.Shah, learned advocate for the

petitioners, states that he does not challenge the market value of the property as was agreed at the time. When 85% thereof was paid to the petitioners subject to their right to recover the remaining 15% but by this petition the

petitioners contend that they were entitled to solatium at 30% and interest at higher rate as per the amendment in the Statute. In view of this statement made by Mr.Shah, notice to issue to the respondents returnable on 22-6-1988." (Order in Special Civil Appln. No.1961 of 1988).

"Mr.S.M.Shah, learned advocate for the petitioner, states that the petitioner does not propose to raise the question of validity of the agreement on the ground that the petitioner's signature was obtained on a blank paper and that he did not understand the nature of the agreement but he states that what he proposes to contend in the reference is that notwithstanding the existence of this agreement, in law he is entitled to market value of the property. He further states that his other contention is that notwithstanding this agreement, the petitioner is entitled to solatium and interest at enhanced rates as per the amendment in the Statute. On this statement, notice to issue to the respondents returnable on 22-6-1988." (Order in Special Civil Appln. No.1962 of 1988).

#. Regarding third petition, it was argued that the petitioner is estopped from challenging the award as he was offered and had accepted the amount of compensation in its entirety. If an order was passed by the respondent stating that the case was covered by Sec.11(2) of the Act, by no stretch of imagination, it can be said that he has committed an error of law which requires to be corrected in exercise of powers under Article 226 of the Constitution of India. Regarding form of application and award and also regarding non-compliance with the provisions of Gujarat Amendment Act and the Rules, it was submitted that as held by the Apex Court, substance of the matter is important and not the form. They urged that this Court has taken a view that if there is a conflict and/or inconsistency between the Central Act, i.e. Land Acquisition Act, 1894 and the Gujarat Amendment Act, since the subject falls under Entry 42 of List 3 (Concurrent List) of Schedule VII to the Constitution of India, Parliament has also power to enact

law and in case of inconsistency between the two, in the light of settled legal position and the provisions of Articles 245 and 254 of the Constitution, the law made by Parliament will prevail. On factual aspects, it was argued that the respondent was satisfied that there was an agreement between the parties. Even otherwise also, at the most such questions can be said to be disputed questions of fact and in exercise of extraordinary powers under Article 226 of the Constitution, this Court does not undertake the task of resolving such questions. On all these grounds, it was submitted that no case has been made out to interfere with the orders passed by the first respondent and the petitions are liable to be dismissed.

##. On hearing learned counsel for the parties, we are of the view that the orders passed by the first respondent are in accordance with law and no ground has been made out to interfere with them. Regarding non-observance of Sec.11(2) of the Act as applicable to Gujarat, in our opinion, the respondents have rightly invited our attention to a decision of a Division Bench of this Court in Dinesh Soni and others Vs. ONGC and another, 1994(2) GLH 131. Considering the relevant provisions of the Constitution in the light of List 3 of Schedule VII to the Constitution, a Division Bench of this Court held that in case of inconsistency between the two Acts, the Act enactd by Parliament would prevail and Gujarat Amendment Act will have to give way. Mr.Bhatt, Asstt. Govt. Pleader made a statement at the Bar that the matter was taken to the Supreme Court and the Hon'ble Supreme Court did not interfere with the decision of this Court. Hence, the contention that the provisions of Sec.11(2) as applicable to Gujarat have not been complied with cannot carry the matter of the petitioners further.

##. The matter, however, can be looked at from different angle also. In Ishwarlal Premchand Shah and others Vs. State of Gujarat and others, AIR 1996 SC 1616, a contention was raised before the Hon'ble Supreme Court that an agreement entered between the owners and the acquiring body was not in the prescribed Form No.14 as specified by rule framed under Sec.55 of the Act. Dealing with the contention and considering the object underlying Sec.11(2), the Court observed that what was essential was not the form but the factum of agreement. For the purpose of deciding validity or otherwise of an agreement, what was to be seen was whether in fact such an agreement was arrived at between the parties. If an agreement was entered into between the parties, it was not material whether it was executed in a prescribed form. Even if it is not in prescribed form, it would not

vitiate the proceedings and action could not be ignored.

##. The factor which weighed with the Hon'ble Supreme Court was that when an agreement is between land owners on the one hand and acquiring body on the other hand, ordinary doctrine of private sale between a willing vendor and a willing vendee would apply. If both of them arrive at a consensus to pay and receive consolidated consideration which would form the market value of the land conveyed to the vendee, there could not be any objection in relying upon such an agreement and in upholding the transaction. In the instant cases also, agreements have been arrived at between land owners and GIDC. Thus, the parties can be said to be willing sellers and willing purchasers. In absence of anything contrary on record to show that there was coercion, duress, force or misrepresentation on the part of the second party, the transactions can be said to be voluntary and when the statutory authority, i.e. respondent No.1 was satisfied that such agreements were arrived at between the parties and were acted upon by accepting substantial amount of payment to the extent of 85% by handing over possession by them to GIDC and statements in writing were also given, it cannot be said that by doing so, he has committed an error of law which requires to be corrected in exercise of powers under Article 226 of the Constitution of India.

##. Similar view was taken in State of Gujarat Vs. Daya Shamji Bhai, AIR 1996 SC 133 and in Abdul Aziz Bdul Razak Vs. Municipal Corporation of Greater Bombay, AIR 1996 SC 1350. It was argued that the land owners were entitled to some additional amount which was not paid to them at the time of agreement. The Supreme Court considering the relevant provisions of the Act held that if the parties agreed and payment was made, it was not open to the owners thereafter to demand additional amount and on refusal thereof, to ask for reference. Such an award would be consent award governed by Sec.11(2) of the Act. The action of the Special Land Acquisition Officer in not making reference in those cases was held to be legal, valid and in accordance with law.

##. We must also state that we are impressed by the argument of the respondents that when at the time of admission, a concession was made which was noted in the orders passed by a Division Bench that the learned counsel for the petitioners did not challenge the market value of the property as agreed, it was a relevant and material fact which cannot be lost sight of at the time of final hearing. Mr.Shah, no doubt, contended that a

concession of law does not bind a counsel. It is true. In our opinion, however, the concession was not on a question of law, but on a question of fact. If the factum of agreement was not disputed and to that effect, a concession was made, the Court hearing the matter, would not be unmindful of that fact. Mr.Shah submitted that even if such a concession was made at one stage, at a subsequent stage, an advocate may request the Court to permit him to argue on all the points. Without expressing final opinion and without rejecting that contention, in our view, the first respondent has not committed any error in observing that he was satisfied that there was an agreement between the parties and substantial payment was made. In the third matter, as stated by the learned counsel for the respondents, entire payment was made. By rejecting the applications, therefore, no error of law, much less an error of law apparent on the face of record, can be said to have been committed by the first respondent.

##. For the foregoing reasons, we do not see any ground to interfere with the orders passed by the first respondent. All the petitions deserve to be dismissed and are accordingly dismissed. Rule is discharged in each petition. No order as to costs. Original judgment is ordered to be kept in Special Civil Application No.1961 of 1988 and one copy each in Special Civil Applications Nos.1962 of 1988 and 8657 of 1988.

Sd/-
(C.K.Thakker,J.)

Sd/-
Dt:20-1-1998 (R.P.Dholakia,J.)
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